

## **QUESTIONS AND ANSWERS ABOUT U.S. RATIFICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD**

### **What is the CRC?**

The Convention on the Rights of the Child (CRC) lays out a comprehensive set of rights for children, and recognizes the essential role and importance of parents and families.

This treaty provides a framework to help governments ensure that children and families have certain rights and protections: children should be free from discrimination; government policies should be based on the best interests of the child; children should survive and develop to their full potential; and, children's views and perspectives are important.

The Convention refers to the family as the fundamental group of society and the natural environment for the growth and well-being of its members, particularly children. Under the Convention, governments are obliged to respect parents' primary responsibility for providing care and guidance for their children.

The CRC was adopted by the U.N. General Assembly in 1989. It is the world's most widely accepted human rights treaty. Every nation has ratified the CRC, except two: the United States and Somalia.

### **What is the status of U.S. ratification of the CRC?**

In February 1995, Secretary of State Madeleine Albright signed the CRC on behalf of President Clinton, beginning of the process of ratification. After signing a treaty, the U.S. Government goes through an extensive evaluation of the treaty's likely effects on U.S. and state laws, and puts together a package of recommendations for how the United States might interpret the treaty. That package goes to the U.S. Senate, which must consider and approve (by two-thirds majority) all treaties for ratification.

In the case of the CRC, although signed by the Clinton Administration, the treaty has never been submitted to the U.S. Senate for consideration. The Obama Administration has said that it intends to submit the treaty to the Senate, but with no firm timeline.

### **Would the CRC, if ratified, automatically take precedence over all federal and state laws?**

There are claims that because of language in Article 6 of the U.S. Constitution ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land"), the provisions of the CRC would automatically supersede all federal and state laws.

This is simply not true. In the first place, the U.S. Supreme Court ruled in 1957 (*Reid v. Covert*) that no branch of the U.S. Government can have powers conferred upon it by treaty that have not been conferred by the U.S. Constitution. Secondly, all human rights treaties ratified by the

United States include a “non-self-executing” clause, meaning that the provisions of the treaty cannot be binding without specific legislative action at federal and state levels. Each elected legislature will decide if, when, and how to incorporate the CRC’s provisions into policies and laws.

### **Would U.S. ratification of the CRC impose federal authority over states?**

In ratifying any treaty, the U.S. Government must address our Nation’s unique separation of powers between the federal government and states. The CRC definitely touches on many areas that are regulated by states, such as aspects of family law, education, and juvenile justice. The fact is, however, that ratifying the CRC would impose no expansion at all of federal jurisdiction. As with all treaty ratifications, the Senate would include a set of reservations, declarations, and understandings (“RUDs”) that define the application of the CRC within the United States. This package of RUDs traditionally includes a “federalism” clause that ensures the United States would leave implementation of the treaty largely to the states.

### **The CRC requires State Parties to report periodically to the UN Committee on the Rights of the Child, which makes recommendations and interpretations for each country. Are the Committee’s decisions binding on the U.S. Government and individual states?**

The CRC requires State Parties to report periodically on implementation of the treaty to the Committee on the Rights of the Child (CRC Committee). The Committee is empowered only to ask questions and make recommendations regarding a country’s children. There is absolutely no provision in the CRC that gives the CRC Committee, the UN, or any other international body any authority to enforce such recommendations. U.S. policy related to children would still, and always, be governed by domestic legislation and not by international standards and norms. The CRC Committee’s recommendations and interpretations are not binding in any way on any of the countries that ratify the Convention.

In fact, the United States already reports to the CRC Committee without any loss of U.S. sovereignty. It is as a party to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography; and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. President Bush signed and the U.S. Senate approved these treaties in 2000 with broad bipartisan support. U.S. participation in the reporting processes for these treaties has been a positive and useful exercise

There has never been a single credible complaint that the CRC Committee forced any country to change its laws.

### **Doesn’t the CRC grant children rights at the expense of parents’ rights?**

The CRC is not about pitting children’s rights against parents’ rights – it is about ensuring that governments recognize the rights and needs of both children and parents. Under the Convention, parental responsibility is protected from government interference. The Convention repeatedly emphasizes the pivotal role parents play in their children’s lives. It recognizes the family “as the fundamental group of society and the natural environment for the growth and well-being of all its

members and particularly children...”, and acknowledges “that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding.”

Interestingly, the rights embodied in the CRC are rooted in the U.S. Declaration of Independence, the U.S. Constitution, and federal and state law affecting the rights of American children and parents. In fact, the Reagan and Bush Administrations contributed to the treaty negotiations by pushing for articles on freedom of thought, conscience, and religion; freedom of expression; freedom of association and assembly; privacy; protection from abuse; family reunification; and periodic review of treatment. Their goal was to ensure that the CRC recognized parents’ rights and focused on individual rights, rather than promote socialism and government interference.

### **Does the CRC give children the right to sue their parents who violate their rights?**

The CRC does not give children the “right” to sue their parents. Any legal action brought by children against their parents must be based on existing federal or state laws, not on provisions contained in the CRC.

### **Because the CRC calls for freedom of religion, does it prevent parents from making their children go to church, or prevent parents from keeping children out of cults?**

The Convention grants children the right to practice their religion free from **government** interference. The CRC specifically recognizes the rights and responsibilities of parents to guide their children in religious matters. That is why the Holy See and many countries with strong religious traditions have ratified the CRC. In addition, many faith-based organizations, such as Covenant House, Evangelical Lutheran Church of America, Church Women United, World Vision, and the United Methodist Church, support U.S. ratification of the CRC.

### **Would the CRC’s provision on freedom of association prevent parents from keeping their children out of violent gangs?**

The CRC does not usurp parents’ authority to prevent their children from associating with persons of “dubious” character, such as pedophiles, gang members, etc. Parents are responsible for ensuring their children do not associate with people who do not have the best interests of their children in mind.

As does the First Amendment to the U.S. Constitution, the CRC does recognize the right of children to peacefully assemble – but within the context of parents’ responsibilities to guide and protect their children.

### **Does the CRC provide children with an “unrestricted” right to access any information they want, including pornography off the Internet?**

As does the U.S. Constitution, the CRC recognizes that children have rights to information. But there is no language in the Convention that gives children the right to “unlimited” freedom of

information, including access to pornography and other obscene materials. The CRC specifically notes the rights and responsibilities of parents to guide and protect children.

### **We already have strong laws and institutions regarding children. Why should the United States ratify the CRC?**

Numerous polls confirm that most Americans care deeply about conditions for children around the world, and believe that our Nation should try to help them. The U.S. Government reflects this American compassion in its support for child survival, education and other important programs. However, as the United States is not party to the CRC, it cannot partner with organizations like UNICEF in using the Convention as a tool to support children and families around the world. This limits our government from exerting the strongest possible leadership internationally to make a difference for the world's children.

We believe that U.S. ratification of the CRC would reinforce America's leadership to help children and families, and strengthen our ability to partner with UNICEF and other organizations to help governments respond to the needs of children and families.

In addition, the CRC would require the U.S. Government to develop and submit public reports to the CRC Committee on how our country meets its obligations under the CRC. The U.S. Government already reports to the CRC Committee on implementation of the Optional Protocols on Children in Armed Conflict and the Sale of Children, and that process has proven to be very important to highlighting and addressing issues facing children.

### **Does the CRC make any difference for children around the world?**

Clearly, the CRC is not a panacea to solve all problems facing children – even after twenty years of the CRC, too many children around the world still cannot go to school, still face exploitation and sexual abuse, still lack access to basic health services.

But because nearly every nation ratified the CRC, the Convention gives international and local organizations a powerful tool to say to governments, are you really doing the best you can for your children? Does your government have the laws and systems in place to protect your children and support your families? And that has helped make the world a better place for children:

- In Niger, which has the highest incidence of child marriage in the world, local organizations used Niger's ratification of the CRC to help convince tribal leaders to speak out against this harmful traditional practice – with the result that hundreds of communities have agreed to stop the practice.
- In Egypt, the CRC was a major tool in the campaign against female genital mutilation, leading to a ministerial decree and a statement by the country's top Muslim institution against the practice.
- India instituted universal, free elementary education as a response to its ratification of the CRC.